THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION Nos.6046 and 6061 of 2006

Dated: 07-08-2006

Between:

Lohiya Industries,
Rep., by its Partment
MahaveerLihiya,
Shamsheergunj, Hyderabad.

..... PETITIONER

AND

The Sales Tax Appellate Tribunal,
Rep., by theSecretary,
Nampally, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.6046 and 6061 of 2006

ORDER: (Per Hon'ble Sri Justice J. Chelameswar)

The writ petition No.6046 is filed with a prayer as follows:

> "For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to issue an appropriate writ order or direction, more particularly one in the nature of a writ of Mandamus, declaring the action of the 2nd and 3rd respondents by way of issuing notice to the petitioner's Bankers in G.I.No.1459/2000-2001 (CST Penalty) Dated 16-02-2006 (On the file of the 3rd respondent calling upon the petitioner's Bankers to pay Penalty of Rs.12,41,577/- pursuant to the order of the Appellate Tribunal in T.A.No.617/2004, dated 25-11-2005 pending TRC.No.11/2006 as arbitrary, illegal, unconstitutional besides being violative of the principles of natural justice thereby directing the 3rd respondent not to take any coercive steps for collection of the disputed penalty of Rs.12,41,577/- for the assessment year 2000-01 (CST Penalty) from the petitioner and pass such other order or orders."

The writ petition No.6061 is filed with a prayer as follows:

> "For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to issue an appropriate writ order or direction, more particularly one in the nature of a writ of Mandamus, declaring the action of the 2nd and 3rd respondents by way of issuing notice to the petitioner's Bankers in G.I.No.1459/2000-2001 (CST Penalty) Dated 16-02-2006 (On the file of the 3rd respondent calling upon the petitioner's Bankers to pay Tax of Rs.29,25,305/- pursuant to the order of the Appellate Tribunal in T.A.No.474/2004, dated 25-11-2005 pending TRC.No.90/2005 as arbitrary, illegal, unconstitutional besides being violative of the principles of natural justice thereby directing the 3rd respondent not to take any coercive steps for collection of the disputed Tax of Rs.29,25,305/- for the assessment year 2000-2001 (CST Penalty) from the petitioner and pass such other order or orders."

The petitioner in both the writ petitions is one and the same. The impugned notice dated 16-02-2006 was issued against the petitioner for liability of sales tax under Central Sales Tax Act, 1956, (CST Act) for the assessment year 2000-2001.

The Sales Tax Appellate Tribunal on 25-11-2005 in T.A.Nos.474 and 617 of 2004 found that the petitioner is liable to pay tax as well as penalty under the relevant provisions of the CST Act and Rules. Challenging the correctness of the said conclusion, the petitioner approached this Court by way of two Tax Revisions being TRC Nos.11 of 2006 and 90 of 2005, which are still pending. In the meanwhile, the respondents issued the impugned notice, which is in the nature of garnishee proceedings, calling upon the banker of the petitioner to pay the amounts as indicated in the notice. Hence, these two writ petitions.

There is a statutory bar for grant of stay in such matters under Section 22(6) of the Andhra Pradesh General Sales Tax Act, 1957 and a Full Bench of this Court in ***Penguin Textiles Ltd. V. State of Andhra Pradesh***[1] has already held that this Court in exercise of revisionary jurisdiction would not have power to grant any interim order staying either tax or penalty.

The question as to what is not permissible under the statute could be achieved by invoking jurisdiction under Article 226 of the Constitution of India fell for consideration both before the Supreme Court and this Court.

In ***State of Orissa and Others v. Ion Exchange India Ltd.,***[2] the Supreme Court, in substance, held that though the constitutional jurisdiction under Article 226 could not be fettered by virtue of statutory provisions, this Court is required to have due regard to the scheme of the statute and only in extraordinary circumstances, the discretion conferred under Article 226 of the Constitution of India is required to be exercised to give a go by to a statutory provision.

A Division Bench of this Court in ***Sruthi Agencies vs. Commercial Tax Officer, Vidyanagar Circle, Hyderabad***[3], in substance held the same, and came to the conclusion that only in extraordinary circumstances where the petitioner is able to establish undue hardship, the power under Article 226 of the Constitution of India is required to be exercised.

Having regard to the facts and circumstances of the case and having heard the learned Government Pleader, we deem it appropriate to dispose of the writ petitions keeping the impugned notice in abeyance on condition that the petitioner deposits the entire amount of tax found due. In so far as penalty is concerned, in view of the pendency of the adjudications, insistence on payment of penalty

would, *prima facie*, cause undue hardship to the assessee/the petitioner, therefore, the petitioner be permitted to pay only a part of the penalty i.e.,. 25% of the penalty. While computing the amounts, the amounts already paid by the petitioner, if any, shall be given credit to.

The writ petitions are accordingly disposed of. No costs.

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J.Chelameswar,J

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D.Appa Rao,J

Date: 07-08-2006
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[1] 117 STC 378
[2] 117 STC 436
[3] 31 STC 75